

### **Remarks**

Applicants request reconsideration of the above-referenced patent application.

#### **I. Pending Claims**

The Office action indicates that only claims 72-82, 85-87, 89-91, and 93-96 are pending. Applicants submit that claim 71 also is pending. This is evidenced by, for example, Applicants' April 20, 2004 Amendment D; and the May 13, 2004 Notice of Allowance. Accordingly, Applicants request that the Patent Office recognize that claim 71 is pending in this application.

#### **II. Amendments to Claims**

Claims 71-82, 85-87, 89-91, and 93-96 are pending. Claims 71-75, 79, 80, 86, 90, 93, and 95 have been amended in this amendment. All the claims, including the amendments, are shown in the previous section. Applicants submit that the amendments do not introduce new matter. Specifically:

Claims 71, 73, 74, and 93 have been amended to replace "thioalkyl" with "alkylthio". This amendment corrects an obvious error, and is supported by Applicant's specification at, for example, page 19, lines 25-26; and page 27, lines 5-6.

In claims 71, 73, 75, and 93, the structures have been amended to show, in a more consistent manner, the bonds that connect the structures to the remaining portion of the compound.

In claims 71, 73, 75, and 93, the R<sup>10</sup> and R<sup>11</sup> definitions have been amended to remove the "NR<sub>2</sub>" substituent.

Claims 71, 73, 74, and 93 have been amended to more particularly define Z<sub>1</sub> and Z<sub>2</sub>.

Claim 71 has been amended to more particularly define X and Y.

The R<sup>c</sup> definition in claim 71 has been amended to expressly recite that the "carboxylic acid function of the chain" is the COR<sup>b</sup> of the CH<sub>2</sub>COR<sup>b</sup> moiety that is bonded to Y<sup>5</sup>.

In claims 71, 73, 74, and 93, the Y<sup>3</sup> and Y<sup>4</sup> definitions have been amended to remove the characterization that the alkyl is straight or branched. This removes a redundancy, given that the term "alkyl" itself already encompasses straight and branched chains. *See, e.g.*, Applicants' specification at, for example, page 17, lines 23-28.

In claims 71, 73, 74, and 93, the Y<sup>3</sup> and Y<sup>4</sup> definitions have been amended to remove the characterization that the aryl and heteroaryl can be saturated or unsaturated. This amendment makes the claim language more consistent with Applicants' specification. *See, e.g.*, Applicants' specification at page 18, lines 12-16.

In claims 71 and 93, the Y<sup>5</sup> definition has been amended to more clearly indicate when it can be carbon or nitrogen. The Y<sup>4</sup> definition also has been amended to more clearly indicate that Y<sup>4</sup> is absent if Y<sup>5</sup> is nitrogen. These amendments do not introduce new matter. More specifically, nitrogen is trivalent. Thus, Y<sup>5</sup> can only be nitrogen if one of Y<sup>3</sup> or Y<sup>4</sup> is absent. And Y<sup>5</sup> is carbon if both Y<sup>3</sup> and Y<sup>4</sup> are both present (as hydrogen or some other substituent). The amendments to the Y<sup>4</sup> and Y<sup>5</sup> definitions in claims 71 and 93 are consistent with this.

Claim 71 has been amended to remove the structure (Formula IA) from the Y<sup>3</sup>/Y<sup>4</sup> definition. This structure is redundant with the remaining portion of the definition, and therefore unnecessary for defining Y<sup>3</sup>/Y<sup>4</sup>.

Claims 72 and 75 have been amended to expressly indicate that they cover salts of the recited compounds. This amendment is consistent with the language of claims 71 and 74, *i.e.*, the claims from which claims 72 and 75 depend, respectively.

In claim 72, the X and R<sup>e</sup> definitions have been combined to make the claim simpler to read. Similarly, the Y and p definitions have been combined to make the claim simpler to read.

In claim 73, the variable "B<sub>1</sub>" has been replaced with "Z<sup>3</sup>". This amendment simply renames the variable, and therefore is non-substantive.

Claim 93 has been amended to remove the structure (Formula IB) from the X/Y<sup>3</sup> definition. This structure is redundant with the remaining portion of the definition, and therefore unnecessary for defining X/Y<sup>3</sup>.

Claims 79, 80, 86, 90, and 95 have been amended to remove "/or additive". This removes a redundancy, given that the term "carrier" includes additives. *See, e.g.*, Applicants' specification at page 31, lines 1-4.

Claims 79, 80, 86, 90, and 95 have been amended to remove the characterization of the cytotoxic agent as being optional.

Other amendments rephrase the claims, remove redundancies or unnecessary terms, or correct grammatical or obvious errors. Applicants submit that such amendments are permissible under MPEP §2163.07.

Applicants reserve the right to pursue any canceled subject matter and/or any other subject matter disclosed in this application in one or more later-filed divisional and/or continuation applications.

**III. Response to rejection of claims 72-75, 77-82, 85-87, 89-91, and 93-96 under 35 U.S.C. §112 (second paragraph)**

Claims 72-75, 77-82, 85-87, 89-91, and 93-96 (and presumably claim 71) have been rejected under 35 U.S.C. §112 (second paragraph) as being indefinite. Applicants request withdrawal of this rejection.

This rejection focuses on the  $Z_1$ - $Z_2$  definition, and specifically on the portion of the  $Z_1$ - $Z_2$  definition that defines the  $Z_1$ - $Z_2$  moiety as containing a carboxamide, sulfone, sulfonamide, alkenyl, alkynyl, or acyl; and the portion that defines the  $Z_1$ - $Z_2$  moiety as containing a heteroaryl ring optionally substituted with  $R^c$ . Claims 71, 73, 74, and 93 have been amended to remove these portions of the  $Z_1$ - $Z_2$  definition. Thus, this rejection has been mooted as to those claims.

Claims 72, 75, 77, 79, 81, 85-87, 89-91, and 94-96 each depend from claim 71, 73, 74, or 93. Thus, this rejection has been mooted as to those claims as well.

Claims 78, 80, and 82 each depend from claim 76. Claim 76 has already been found to be allowable. Claims 78, 80, and 82 should therefore be allowable over the rejection for the same reasons as claim 76.

Applicants have amended the  $Z_1$ - $Z_2$  definitions in claims 71, 73, 74, and 93 specifically to overcome this rejection and thereby expedite prosecution of this application. Applicants, however, respectfully submit that the deleted language is proper under 35 U.S.C. §112 (second paragraph). Applicants also respectfully submit that the terms "alkenyl", "alkynyl", "acyl", "carboxamide", "sulfone", "sulfonamide", "aryl", and "heteroaryl" are not limited as suggested in the Office action. More specifically, each such substituent may be mono-valent or multi-valent unless the specific context of their use requires otherwise. Indeed, Applicants' specification defines each of these terms as a "radical". The term "radical", as used in the art, encompasses

both mono- and multi-valent moieties. There is nothing in Applicants' specification suggesting that the term "radical" should be defined otherwise. In fact, limiting the above-listed radicals in such a manner would be contrary to Applicants' specification. Applicants' specification, for example, indicates that "alkynyl" encompasses both mono- and di-valent radicals by defining "alkynylene" as a "divalent alkynyl radical". See, e.g., Applicants' specification, page 26, lines 4-5.

#### **IV. Findings of Allowability and Utility**

Applicants acknowledge that claim 76 has been found to be allowable. Applicants also acknowledge the Examiner's recognition of the utilities that Applicants recite in their pending method-of-treatment claims, *i.e.*, claims 81, 82, 87, 91, and 96.

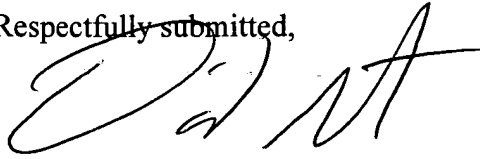
\* \* \* \* \*

Applicants hereby request a 3-month extension to respond to the July 20, 2004 Office action, and have enclosed a check to cover the fee for that extension. Applicants believe that they do not owe any additional fee in connection with this filing. If, however, Applicants do owe any such fee(s), the Commissioner is hereby authorized to charge the fee(s) to Deposit Account No. **08-0750**. In addition, if there is ever any other fee deficiency or overpayment under 37 C.F.R. §1.16 or 1.17 in connection with this patent application, the Commissioner is hereby authorized to charge such deficiency or overpayment to Deposit Account No. **08-0750**.

Applicants submit that the pending claims are in condition for allowance, and request that this application be allowed. The Examiner is requested to call the Undersigned if any issues arise that can be addressed over the phone to expedite examination of this application.

Amendment E  
U.S. Appl. 09/881,913  
January 21, 2005

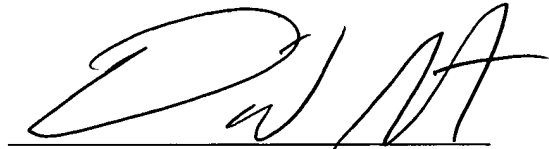
Respectfully submitted,



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**CERTIFICATE OF MAILING UNDER 37 CFR §1.8**

I certify that this correspondence is being deposited with the U.S. Postal Service on **January 21, 2005** with sufficient postage as first class mail (including Express Mail per MPEP §512), and addressed to **MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450**.



DMG/SSB/PML